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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/604,841

08/21/2003

Huy Lam Thai

45496.18

1840

22828

7590

06/14/2006

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EXAMINER

MAHAFKEY, KELLY J

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/604,841	THAI ET AL.	
	Examiner	Art Unit	
	Kelly Mahafkey	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-10 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4-6, and 9 are rejected to under 35 U.S.C. 103 (a) as being unpatentable over Smith (US 5275830) in view of LaBaw et al. (US 4784867) as evidenced by Brennan (Food Dehydration: A Dictionary and Guide). The references and rejection are incorporated herein and as cited in the office action mailed October 7, 2005.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Smith (US 5275830) and LaBaw et al. (US 4784867) as evidenced by Brennan (Food Dehydration: A Dictionary and Guide), further in view of Lund et al. (ed.) (Microbiological Safety and Quality of Food, Volumes 1-2). The references and rejection are incorporated herein and as cited in the office action mailed October 7, 2005.

Claims 7 and 8 are rejected under U.S.C. 103(a) as being unpatentable over the combination of Smith (US 5275830) and LaBaw et al. (US 4784867) as evidenced by Brennan (Food Dehydration: A Dictionary and Guide), further in view of Prosser et al. (US 2002/0015760 A1). The references and rejection are incorporated herein and as cited in the office action mailed October 7, 2005.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Smith (US 5275830) and LaBaw et al. (US 4784867) as evidenced by Brennan (Food Dehydration: A Dictionary and Guide), further in view of Gibson et al. (ed) (Functional Foods). The references and rejection are incorporated herein and as cited in the office action mailed October 7, 2005.

Response to Arguments

Applicant's arguments filed March 27, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the rejection teaches away from the present invention, specifically the Labaw reference, applicant is referred to the abstract (of the Labaw reference), which teaches a moist and flexible product. Furthermore, the excerpt from Labaw, from which applicant has based their argument, is related to prior art and not the invention of Labaw (i.e. the invention which is relied upon in the present and previous office action) and is regarding different product components (i.e. whole nutmeals and large fruit fragments) than the invention which is relied upon in the present and previous office action. Thus, the passage which applicant cites is not relevant to the issue at hand.

Regarding applicant's argument in regard to the binder composition itself and the degree of hardness in the resulting product, applicant is referred to the previous office action, Smith, and Labaw, in which

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- Smith teaches a food bar, with a density of not more than 1.1 g/cm³ (Column 7 lines 32-36), comprising:
 - Dried fruit pieces with a moisture content of 15-30% (Column 7 lines 38-48)
 - A binder composition which includes corn syrup or high fructose corn syrup (column 4 lines 43-50)
- Labaw teaches a food bar comprising:
 - Dried fruit pieces (Abstract and Column 6 lines 31-34)
 - A binder composition which includes corn syrup or high fructose corn syrup and has a hardness level of 0.15-3 kg/cm² (column 3 line 25 to column 4 line 50)

The references teach of the same binder composition (i.e. corn syrup or high fructose corn syrup) as applicant (Specification paragraph 0025), the same components as applicant (i.e. dried fruit pieces- Specification paragraph 0009), and a food bar density that is the same as applicants (Specification paragraph 0011). Therefore, it would have been expected that the combined references teach of the same hardness level as applicant. Applicant is reminded that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing

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that they are not." In re Spada, 911F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

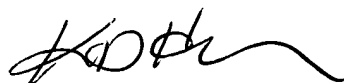
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kelly Mahafkey
Examiner
Art Unit 1761



KEITH HENDRICKS
PRIMARY EXAMINER